



owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. (s. 717.139, F.S.) There is no statute of limitations period for an owner to claim his or her property.

The Department Financial Services (department) administers the Act<sup>3</sup>. Representatives from the department indicate that the means used to find lost property owners include social security numbers, direct mailing, the state DMV files and state payroll records, newspaper advertisements, and a state-run website (<http://up.dbf.state.fl.us/>) where unclaimed property can be found. It is responsible for receiving property, locating the rightful owners, and returning the property (or its value, in cases of sold securities) to them. Representatives from the department stated that in 2002 the state received \$142 million in unclaimed property, and returned \$73 million back to the owners of previously unclaimed property.

Unclaimed property constitutes any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes. Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the department. Checks, drafts, banks deposits, stocks, as well as other intangible property, are presumed abandoned if unclaimed for a period of 5 years after it is payable or distributable. (ss. 717.102-717.1101, F.S.) Notable exceptions to the 5-year period include contents in safe deposit boxes (3 years), money orders (7 years), and travelers' checks (15 years). If the property remains unclaimed, all proceeds from abandoned property are then deposited by the department into the Department of Education School Trust Fund (State School Fund), except for an \$8 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through at least one search for the owners within 180 days after an account becomes inactive (2 years from the date of specified activities). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with the DFS by May 1 for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. In lieu of forms, the holder may submit the required information via electronic medium as the department may provide by rule. Under the provisions of s. 717.117, F.S., the report to the DBF generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.

### **Conversion From a Mutual Insurer to a Sock Insurer (“Demutualization”)**

Insurance companies can be organized as either a mutual insurance company or as a stock insurance company. A mutual insurer is collectively and entirely owned by its policyholders, who are the members of the mutual insurance company. The mutual insurance company's fund

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3. Effective January 7, 2003, the Unclaimed Property Program of the Department of Banking and Finance was transferred to the Department of Financial Services (ch. 2002-404, L.O.F.)

that it uses to pay for the payment of losses consists of premiums mutually contributed by the parties insured. A stock insurance company is organized as a business corporation. A stock insurance company is owned by its shareholders, who may or may not be policyholders. Stock insurance companies use capital stock, income, and any accumulated surplus to pay for the losses of insureds. Stock insurers have a greater ability to raise capital due to the fact that they can sell stock. As a result, a number of companies have converted from mutual insurers into stock insurance companies in the last 10 years.

A mutual insurance holding company is a form of insurance corporate organization that allows a mutual (policyholder-owned) insurance company to convert into a stock (stockholder-owned) insurance company. In Florida, domestic mutual insurance holding companies were authorized by 1997 legislation, although the Florida provisions only apply to domestic Florida insurers. (ch. 97-216, L.O.F. creating part III of ch. 628, ss. 628.701-628.733, F.S.) Insurance companies domiciled outside of Florida are governed by the demutualization laws of the state in which they are domiciled. The mutual insurance holding company provides an alternative method for a domestic mutual insurance company to convert into a stock insurance company.

As mentioned earlier, an advantage of converting into a stock insurer is that it significantly enhances an insurer's ability to raise capital, issue debt, and engage in mergers and acquisitions. From 1998 to 2001 many of the largest insurance companies in the United States demutualized. AmerUS Group, John Hancock Financial, MetLife, MONY Group, Principal Financial, and Prudential all demutualized during this time period.

### **Policyholders that Cannot be Located**

It is not uncommon that a policyholder does not remain in contact with his or her insurance company due to various circumstances. One example is when a policyholder has paid in full a life insurance policy. There is no reason for the policyholder to remain in contact with the insurance policy, as no further payments are required and dividends on the policy, if any, may often be automatically invested in additional paid-up coverage. Historically, an insurance company often would not receive a communication concerning such policyholders until their eventual death, and the policyholder's estate filing a claim.

When an insurance company demutualizes, its policyholders become entitled to receive compensation in the form of cash or stock, depending on the legal requirements of the insurer's state of domicile. However, in the case of policyholders who cannot be located, the insurance company is not able to make delivery of the property to the policyholder. In Florida, the five year time period begins to run on the date unclaimed property is issued. For example, the 5-year period on a dividend check would begin to run on the date printed on the dividend check. After 5 years, the property is presumed to be abandoned. Under current Florida law, when an insurance company demutualizes, the 5-year period for lost policyholders does not begin until the demutualization has occurred and payment is made (i.e. attempted to be made) to the policyholder. Thus, even though the last contact with the policyholder may have been up to 5 years prior to the demutualization, the 5-year period would not begin until demutualization occurs and payment to the policyholders is made. For example, suppose a policyholder had been lost to an insurance company since 1998. Then in 2001, the company demutualizes. In Florida,

the timetable for abandonment would not finish running until 2006, even though the policyholder lost contact in 1998.

### **Unclaimed Firearms**

Another type of unclaimed property is an unclaimed firearm. Firearms often become unclaimed property when the firearm's owner places it in a safety deposit box at a bank and does not return to the bank or perhaps forgets about the item. Eventually, these items are often turned over to the department to hold as unclaimed property.

## **II. Effect of Proposed Changes:**

**Section 1** amends s. 717.101(12), F.S., to include bearer bonds and original issue discount bonds among the examples of "intangible property." Bearer bonds and original issue discount bonds will now be subject to s. 717.102, F.S., which states that intangible property held for more than 5 years after the property becomes payable or distributable is presumed unclaimed.

**Section 2** creates s. 717.1071, F.S., to govern when property from the demutualization of an insurance company is presumed unclaimed. Property payable or distributable in the course of the demutualization of an insurance policy is presumed unclaimed 5 years after the earlier of: 1) the date of last contact with the policyholder or 2) the date the property became available or distributable.

**Section 3** amends s. 717.1101, F.S., and changes the section title to "unclaimed equity and debt of business associations." The section explains when stock or other equity interests in a business association are presumed unclaimed, and provides guidelines for the handling of investments that do not pay out actual dividends. Stock or another equity interest in a business association is presumed unclaimed 5 years after the earliest one of the following:

- The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner.
- The date of a statement of account or other notification or communication that was returned as undeliverable.
- The date the holder discontinued mailings, notifications, or communications to the apparent owner.

The changes to s. 717.1101, F.S., also state when unmatured and matured debt is presumed unclaimed. Unmatured or unredeemed debt is presumed unclaimed 5 years after the date of the most recent interest payment unclaimed by the owner. Matured or redeemed debt is presumed unclaimed 5 years after the date of maturity or redemption. When stock or an equity interest in a business association, unmatured debt, or unredeemed debt is presumed unclaimed, other property rights that accrue to the owner as a result of the property interest are also presumed unclaimed.

Property is considered unclaimed under s. 717, F.S., after completion of the 5-year period. The running of the 5-year period ceases when the person does any of the following:

- Communicates in writing with the association or its agent regarding the interest or a dividend, distribution, or other sum payable as a result of the interest.
- Otherwise communicates with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest. Communication not in writing must be evidenced by a memorandum or other record on file with the association for its agent.
- Presents an instrument issued to pay interest or a dividend or other cash distribution.

**Section 4** amends s. 717.119(5), F.S., to mandate that firearms or ammunition found in an unclaimed safe deposit box or other repository is to be delivered by the holder to a law enforcement agency for disposal. In the case of firearms that are delivered to the Department of Financial Services, the department is authorized to make a reasonable effort to determine the historical value the firearm may have to collectors. Firearms with historical value may be sold to persons having a federal firearms license. Firearms not sold by the department are to be turned over to a law enforcement agency in the state of Florida for disposal. No administrative, civil or criminal liability attaches to the department for any firearms it delivers to a law enforcement agency in the state.

**Section 5** states the act is effective upon becoming a law.

### III. **Constitutional Issues:**

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### IV. **Economic Impact and Fiscal Note:**

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

Owners of unclaimed property would be subject to the provisions of this bill. The bill would not affect the right of property owners to reclaim their property. The change for some property owners is that they would be required to recover their property from the department at an earlier date. Additionally, private insurance companies would relinquish control of the effected unclaimed property at an earlier date than previously required.

**C. Government Sector Impact:**

The Department of Financial Services states that this change in legislation will cause a one-time increase in the State School Trust Fund. The department estimates that the changes to the 5-year period for unclaimed property contained in this bill will produce a total of \$60 million to \$65 million in additional deposits into the State School Trust Fund over the 2002-2003 and 2003-2004 fiscal years.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

None.

**VII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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